In re: Senate Bill No. 427 is unconstitutional

January 16, 1933

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Hon. Jerome M. Joffee,
Senator, 7th District,
Senators' Office Building,
Jefferson City, Missouri.

My dear Senator:-

At your request, I am furnishing you an opinion as to the validity of Senate Bill No. 427, purporting to amend Section 5978, Article XII, Chapter 37, Revised Statutes Missouri, 1929, and by adding three new sections thereto, all of which are shown at pages 238, 239, 240, Session Laws, 1931.

An examination of the House Journal, which is admissible in evidence, State ex rel. vs Mead, 71 Mo. l.c. 270, at pp. 1363-64, 56th General Assembly, reveals that S.B. 427 was taken up April 30th, 1931 for third reading on final passage. This bill was amended, but received only thirty-six votes in support thereof, and therefore was defeated.

Section 35, Article IV of Missouri Constitution reads as follows:

> "When a bill is put upon its final passage in either house, and failing to pass, a motion is made to reconsider the vote by which it was defeated, the vote upon such motion to reconsider shall be immediately taken, and the subject finally disposed of before the house proceeds to any other business."

In accordance with the above constitutional provision, a motion to reconsider the bill was taken up May 1st, 1931 and defeated. House Journal 1422.

No provision similar to Section 35, supra has been found in the constitutions of other states, and apparently has never been passed upon by the Missouri Courts. What construction then shall be placed on Section 35?

In construing it we must bear in mind that,

> "The constitution was written by plain men for a plain and obvious purpose and should be construed without refined subtlety, i.e., delicacy of mental action." State ex rel. vs Drabelle, 261 Mo. l. c. 522.

A proper construction of Section 35, hinges upon the meaning of "final" and "finally disposed of".

Webster defines final as "conclusive", "decisive" and Bouvier's Law Dictionary, 3d, Rev. Vol. 2, p. 1221, defines final as "last", "conclusive", "pertaining to the end". Webster defines finally as meaning "the end or outcome", "lastly", "conclusive", "for all time", "beyond recovery or alteration".

"Disposed of" as defined by Webster means to "arrange or settle finally", "to determine the fact of", "to get rid of", "to put out of the way", "to finish with", and similar definitions are found in Vol. 3, Words and Phrases, p. 2114.

When S.B. #427 was taken up on motion to reconsider to be "finally disposed of", the defeat of such motion to reconsider means that the house parts with, relinquishes, gets rid of, finishes with, and lastly acts upon the bill, and such decision is conclusive, decisive, and the motion to reconsider when defeated is beyond recovery or alteration, has reached the end, and dies. Only one motion to reconsider is in order and permissible under the above constitutional provision, and this procedure is approved in Hines Precedents, Vol. 5, S.6037. The House was therefore without authority, after the defeat of the motion to reconsider, to act further upon S.B. #427.

A second objection to S.B. #427 is that it violates Section 31, Article IV of the Missouri Constitution.

Section 31, supra is as follows:

> "No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor."

The only place in the House Journal where it appears that S. B. #427 was passed by the House, is under date of May 2nd, 1931 and shown in the House Journal, p.1467. The bill appears to have been approved by the Governor, May 14, 1931, Laws Mo. 1931, p.240. A close examination of the House Journal under date of May 2nd, 1931, p.1467 fails to show a compliance with mandatory provisions of Section 31, supra. The Journal fails to show the recording of the yeas and nays vote, and fails to show the names of the members of the House voting thereon. This omission is fatal to the bill. The Supreme Court of Alabama in State ex rel. Attorney General vs Buckley, 54 Alabama, l.c. 613, in passing upon a provision of the Alabama Constitution, in substance identical with Section 31 of the Missouri Constitution said:

> "The Constitution, then, requiring that the yeas and nays shall be matter of record, no other evidence can be received of this requirement, nor can its want be supplied by intendment. Of this fact the record (journal) must speak, and if silent, the fact, in legal contemplation, does not exist."

Section 31, supra, is mandatory and has heretofore been construed by the Supreme Court of Missouri, in State ex rel. Schmoll vs Drabelle, 261 Mo., l.c. 522, 523, in the following language:

> "The provision in hand is cast in language unmistakable, mandatory, and of an import not to be misunderstood. It stands on its own reason. Stat pro ratione voluntas. But many substantial and controlling reasons might be given did time permit or the occasion demand. Look at it. It starts off with the peremptory phrase, "No bill shall become a law unless"--unless what? Unless on its final passage "the vote be taken by yeas and nays." If that were all of it then the fore or aft recital of the journal that the vote was taken by yeas and nays and announcing a result might be sufficient. But the constitution-maker writing paramount law controlling the legislative law-maker the courts and the Governor, went further; witness, unless "the names of the members voting for and against the same be entered on the journal," and it did not stop there but goes on to say "and (unless) a majority of the members elected to each house be recorded thereon as voting in its favor." All these elements are essential prerequisite to the validity of a law, and one is just as essential as another. The recording of the votes is essential. The entering of the names of the voting members on the journal and showing a majority is essential, and the taking of the vote by yeas and nays is essential. Now, by the solemn admissions of our Attorney-General hereinbefore reproduced, that part of the journal of the house devoted to the constitutional purpose in hand, shows the bill did not receive a constitutional majority. No criticism can weaken, no analysis shake and no reasoning can overthrow that monumental fact. There it stands emblazoned on the record so that even he who runs may read. Hence, however much we might agr e with counsel that every presumption is allowed in favor of the validity of a law and that courts, to sustain an act of the Legislature, will indulge such presumptions and not declare the law invalid nor make it perish except it be bad beyond a reasonable doubt, cannot apply here. We have written the law too often to the effect that presumptions take flight in the presence of the actual facts not to stand by the doctrine now."

S.B. #427 was not passed in accordance with the constitutional provisions heretofore pointed out and did not become a law even though signed by the presiding officer of each house and approved by the Governor. State ex rel. vs Drabelle, 261 Mo. 515.

The above statute being unconstitutional, we hold that Section 5978

R. S. Mo. 1929 is still in full force and effect.

Yours very truly,

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Asst. Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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